

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1509 of 2007()

O.S.NO.201/2007 OF MUNSIFF'S COURT, ERNAKULAM

PETITIONER:

JAIN MATHEW, AGED 38 YEARS, S/O.MATHAI,
BUSINESS, RESIDING AT PERUMBADATH HOUSE,
MANDADAPILLY DESOM, KAIPPATU VILLAGE,
KANAYANNUR TALUK, ERNAKULAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

1. PUSHPA MONCY, W/O.MONCY,
KUDIL HOUSE, PIRVOM VILLAGE,
MUVATTUPUZHA TALUK.
2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1509 of 2007

Dated this the 23rd day of May 2007

O R D E R

Against the petitioner, a conditional order under Section 133 Cr.P.C has been issued by the Sub Divisional Magistrate. The said order dated 23/03/2007 is produced as Annexure IV. The case has been made over subsequently to the Executive Magistrate and Tahsildar and proceedings are in progress.

2. The petitioner has rushed to this court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated under Annexure IV. What is the reason? According to the learned counsel for the petitioner, the petitioner is the one having property on the lower level. The respondent herein, a neighbour, has property at a higher level. The petitioner herein is allegedly cutting soil resulting in danger to the trees standing in the property of the respondent at a higher level. Apprehending that the conduct of the petitioner would result in nuisance to the respondent, the respondent approached the Sub Divisional Magistrate and it is thus that the Sub Divisional Magistrate, after obtaining the report of the Village Officer, initiated the proceedings under Annexure IV. The petitioner has rushed to this court without and before waiting for

orders of the Sub Divisional Magistrate on the objections raised by him.

3. I am called upon to invoke the powers under Section 482 Cr.P.C. Such extraordinary inherent powers are to be invoked sparingly in and exceptional cases and that too only in aid of justice. Having gone through the relevant details which are placed before me, I do not at all find any reason to justify invocation of such extraordinary inherent powers. The contention of the petitioner that the dispute is essentially one of civil nature and that the Executive Magistrate must take his hands off the dispute does certainly deserve to be considered. That contention is to be raised before the Executive Magistrate. I have no reason to assume that the Executive Magistrate would not consider the said objections or shall not follow the procedure prescribed by law.

4. In these circumstances, this Criminal Miscellaneous Case is dismissed but without prejudice to the right of the petitioner to raise all his contentions before the Executive Magistrate who is seized of the matter.

(R.BASANT, JUDGE)

jsr

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PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007